

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
JAMES G. GREEN,

06 CV 1721 (RMB) (AJP)

PLAINTIFF(S),

- against -

THE HERTZ CORPORATION, INC.

DEFENDANT(S).
-----X

MOTION FOR
PLAINTIFF'S MOTION
FOR A ~~JURY TRIAL~~

DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 7/2/06

PLEASE TAKE NOTICE that, upon the annexed affidavit of Thomas A. Farinella, Esq., sworn on June 29, 2006, respectively, plaintiff, by its attorney, The Law Office of Thomas A. Farinella, will move this Court before the Honorable Andrew J. Peck, United States Magistrate Judge, United States District Court, Courtroom 20D, United States Court House, Southern District of New York, 500 Pearl Street, New York, New York, to grant plaintiff, request for a jury trial.

Queens, New York
June 29, 2006

7/1/06
Respectfully submitted,

The Law Office of Thomas A. Farinella

By: Thomas A. Farinella
THOMAS A. FARINELLA (TF-8309)
242-11 Braddock Ave.
Bellerose, NY 11426

SO ORDERED:
Hon. Andrew Jay Peck
United States Magistrate (917) 806-7053
Attorney for Plaintiff

*Motion granted for all
words stated in its
verdict at the last
conference.*
BY FAX

Thomas A. Farinella (TF-8309)
The Law Office of Thomas A. Farinella
242-11 Braddock Ave.
Bellerose, NY 11426
(917) 806-7053
Attorney for Plaintiff

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**
-----X
JAMES C. GREEN

06 CV 1721 (RMB) (AJP)

PLAINTIFF(S) ,

**AFFIRMATION FOR
PLAINTIFF'S MOTION
FOR A JURY TRIAL**

- against -

THE HERTZ CORPORATION, INC.

DEFENDANT(S) .
-----X

Plaintiff by his attorney, submits the following
affirmation in support of plaintiff's motion for a jury
trial whereby, Thomas A. Farinella, an attorney-at-law duly
admitted to practice in the State of New York and the
Southern District of New York, affirms under the penalty of
perjury:

1. I am associated with the Law Offices of Thomas A.
Farinella, the attorney for James C. Green (hereinafter
"Green" or "Plaintiff"), the Plaintiff in the above
referenced action, and based upon my review of the file

and my prior handling of this case, I am fully familiar with the facts and proceedings hereto had herein.

2. I was admitted to practice before the Court in April of 2002 and remain a member in good standing.
3. This Affidavit is being submitted in support of the within motion for a jury trial, in a removed case from the New York State Supreme Court in that such cases "all pleadings that are served do not fall within the situations contemplated Fed. R. Civ. P, (81)(c), Turkenitz v. Metromotion, 1997 U.S. Dist. LEXIS 19762.
4. Presumably if the case was not removed Plaintiff would be able to decide if he would like a jury trial when the case is ready for trial as stated by United States District Court for the Southern District of New York, "the decision as to whether or not a case should be tried by a jury need not be made in New York State Courts until a case is actually ready for trial." Turkenitz v. Metromotion, 1997 U.S. Dist. LEXIS 19762. In addition CPLR

§4102(e) gives broad discretion to grant late requests for a jury.


5. The Court further determined, "there are three factors that would allow the district court on remand to allow a "late" request for a jury trial. First, whether the case is of a type "traditionally triable by jury. Second, the parties' assumption as to whether the case would be tried to a jury. Third, prejudice to the non-movement. Turkenitz v. Metromotion, 1997 U.S. Dist. LEXIS 19762.
6. In the instant case, all necessary pleading have not been served, wrongful termination based upon discrimination is "traditionally triable by jury," is was assumed by counsel that the case would be tried by a jury and the defendant would not be prejudice because very limited, if any discovery at all has been provided.
7. Plaintiff respectfully requests this Court grant this motion for a jury trial by the plaintiff James C. Green.

Wherefore, the undersigned, Thomas A. Farinella,
respectfully moves for the Court to grant plaintiff's
motion for a jury trial.

Queens, New York
June 29, 2006

Respectfully submitted,

The Law Office of Thomas A. Farinella

By: 
THOMAS A. FARINELLA (TF-8309)
242-11 Braddock Ave.
Bellerose, NY 11426
(917) 806-7053
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the attached Motion for Jury Trial was sent by facsimile and first-class U.S. mail and (in properly-addressed envelope with first class postage duly paid) before 5:00 p.m. on June 29, 2006 to the attorneys of record for all or the parties in this action at the addresses listed below:

1. EPSTEIN BECKER & GREEN, P.C.
Kenneth DiGia, Esq.
250 Park Ave.
New York, NY 10177-0077
Attorneys for the Defendant

Queens, New York
June 29, 2006

The Law Office of Thomas A. Farinella

By: 

THOMAS A. FARINELLA (TF-8309)
242-11 Braddock Ave.
Bellerose, NY 11426
(917) 806-7053
Attorney for Plaintiff

06 CV 1721 (RMB) (AJP)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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JAMES C. GREEN

PLAINTIFF(S) ,

- against -

THE HERTZ CORPORATION, INC.

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PLAINTIFF' S MOTION FOR A JURY TRIAL

—
Attorney for Plaintiff:
Law Office of Thomas A. Farinella
By: Thomas A. Farinella, Esq.
Attorney & Counselor at Law
242-11 Braddock Ave.
Bellerose, NY 11426
(917) 806-7053
(646) 349-3209

Referred To:

Clerk

Date: _____

FAX TRANSMITTAL SHEET



**ANDREW J. PECK
UNITED STATES MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT**

Southern District of New York
United States Courthouse
500 Pearl Street, Room 1370
New York, N.Y. 10007-1312

Fax No.: (212) 805-7933
Telephone No.: (212) 805-0036

Dated: July 5, 2006

Total Number of Pages: 8

| TO | FAX NUMBER |
|---------------------------|--------------|
| Thomas A. Farinella, Esq. | 646-349-3209 |
| Kenneth W. DiGia, Esq. | 212-661-0989 |
| Frank B. Shuster, Esq. | 404-525-6955 |

TRANSCRIPTION:

MEMO ENDORSED 7/5/06

Motion granted for the reasons stated on the record at the last conference.

Copy to: Judge Richard M. Berman